

MEMORANDUM

To: New Canaan Planning & Zoning Commission
From: Amy E. Souchuns, Esq.
Attorney for Jennifer Holme & David Markatos, 1328 Smith Ridge Rd.
Date: April 13, 2017
Re: Grace Farms Foundation Special Permit Application

In its March 27, 2017 application package (“Renewed Application”), Grace Farms Foundation (“Foundation”) once again articulates its desire to add two additional principal uses on its property to the existing religious institution principal use, as well as a variety of accessory uses. If granted, this request would result in Grace Farms acting as a church, club, philanthropic organization, public park, office building, commercial conference center, and restaurant. Such an unprecedented and intense use of a site in New Canaan’s lowest density residential zone not only violates New Canaan’s Zoning Regulations (“Regulations”) and Plan of Conservation and Development (“POCD”) for the reasons set forth in our December 20, 2017 and March 20, 2017 memoranda, but also fails to satisfy the relevant special permit criteria set forth in the Regulations.¹ Confronted with this reality, this Commission must deny the Renewed Application and direct the Town Planner to enforce the conditions of the 2013 Approval.

Burden of Proof:

Section 8.2.B.3 of the Regulations establishes the standards governing the Commission’s review of a special permit application, providing that: “[b]efore the Commission approves a Special Permit Application, it shall determine that the application: (i) is in conformance with the applicable provisions of these Regulations, (ii) has, in the sole discretion of the Commission, satisfied all applicable Special Permit criteria in these Regulations, and (iii) is in harmony with the purposes and intent of these Regulations.” Regulations § 8.2.B.3.c.; see also Cambodian Buddhist Society v. Planning & Zoning Comm’n, 285 Conn. 381 (2008) (“[T]he nature of special exceptions is such that their precise location and mode of operation must be regulated because of the topography, traffic problems, neighboring uses, etc., of the site. We also have

¹ This substantive response memorandum supplements the December 20, 2017 Memorandum (“December Memo”) and the March 20, 2017 Memorandum (“March Memo”) on the principal use issue.

recognized that, if not properly planned for, such uses might undermine the residential character of the neighborhood. Thus, we have explained that the goal of an application for a special exception is to seek permission to vary the use of a particular piece of property from that for which it is zoned, without offending the uses permitted as of right in the particular zoning district.”)

In seeking to amend its 2013 Approval and requesting new special permit uses, the burden rests entirely on the Foundation to demonstrate that the proposed revisions and new uses comply with the Regulations, satisfy all of the special permit criteria, and are harmonious with the purposes of the Regulations. The Foundation’s Renewed Application fails to meet that high standard.

For the Commission’s ease of reference, attached as Exhibit A is a table that summarizes the substantive changes proposed by the Foundation since the 2013 Approval. Unfortunately for my clients and other abutting neighbors, many of the proposed changes only serve to further intensify the Foundation’s use of Grace Farms with the concomitant effect of significantly greater impacts and encroachments on surrounding properties.

Withdrawal Period:

Following the Foundation’s withdrawal of its September 26, 2016 application package (“Withdrawn Application”) on January 20, 2017, my clients met with the Town Planner on two separate occasions to discuss their key concerns. At their initial February 2, 2017 meeting, they requested that those concerns be communicated to the applicant in anticipation of the filing of the Renewed Application. See Exhibit B (Correspondence to Steve Palmer). Contrary to the Renewed Application’s intimations of multiple meetings by the Foundation to incorporate and resolve the concerns of abutting neighbors, my clients had only one on-site meeting with the Foundation to discuss landscaping issues. While my clients welcomed a more fulsome discussion of their key concerns, the Foundation’s sole focus was on landscaping. See Exhibit C (Email to Steve Palmer). Frankly, the response from the Foundation (both by way of silence and by the requests in the Renewed Application) has been underwhelming and dismissive of the concerns that my clients have articulated, including the absurd suggestion that affected neighbors place window film on their windows to lessen the effects of the light pollution radiating from the River Building at night. See Exhibits B, C, D. Only my clients’ request to incorporate all of Grace Farms into the Renewed Application was fully taken into account by the Foundation.

Moreover, during the withdrawal period, the Foundation yet again disregarded the Town's directives on the terms of its operations. As early as October 2016, the Foundation was already soliciting space grant applications for 2018 and it continues to do so through the present. This presumptuous action violates the Commission's clear directive in January 2017 not to issue new space grants beyond what had already been granted. See January 27, 2017 Letter from Steve Palmer to Edward O'Hanlon (Exhibit E); Foundation Press Release (Exhibit F); Renewed Application, Tab E (noting quarterly reviews of small space grant applications).

Conspicuously absent from the Renewed Application is the documentation the Commission requested at the November 29, 2016 hearing for the most significant space grant recipient – Grace Community Church – specifically, a copy of the revocable license and log of church activities. Also absent from the Renewed Application is a complete reconciliation of material deviations from the approved 2013 Overall Site Development Plan C-100 in the 2015 As Built Survey. Conflicts between these documents include the footprint and building height of the community garden shed, the continued existence of an overflow parking lot adjacent to the Entry Way House, and the movie theater in the lower level of the Commons volume.

With this factual background, the Commission must view the Foundation's willingness or ability to comply with conditions of any approval with a healthy skepticism. My clients have been waiting patiently for more than 18 months for enforcement of clear and unambiguous conditions and have watched the Foundation own and operate a use that has never received a single approval from this Commission. See December Memo, Exhibit K; January 20, 2017 Letter to John Goodwin (Exhibit G). As both Donald Poland and Planimetrics noted in their respective reports, enforcement of additional conditions on more uses would be onerous and highly impractical. As such, the only viable alternative is to deny the Renewed Application.

Operational Issues:

Despite the representations contained in the Renewed Application, the Foundation seeks to increase, not reduce, its hours of operation for the general public. As documented on the Grace Farms website (attached as Exhibits H & I), the Foundation states that Grace Farms is open to the public Tuesday to Saturday, 10am to 6pm and Sunday noon to 6pm. Yet in the Renewed Application, the Foundation requests that those general public hours be increased by an hour, to 7pm on those days. The apparent "reduction" in general public hours is based upon the Foundation's misguided belief that the 2013 Approval requires that interior site lighting be shut

off at 11pm and the Foundation extrapolates that mandate to govern general public hours. The 2013 Approval, however, governs only the religious institution, not the club and philanthropic organization approvals now sought in the Renewed Application.

Moreover, the fact that the Foundation (i) remains unwilling to preclude general public access on the weekends and weekday evenings – the very times that my clients are most likely to be enjoying their property – and (ii) proposes no limitations on the times that programming events can occur at Grace Farms is representative of Foundation’s continued tone deaf approach and general stonewalling of the neighborhood. Put simply, my clients are aware of no other institutional use in New Canaan’s 4-acre residential zone that has completely unregulated hours of operations for its programming events. The Foundation contends that its first year has been successful and it does not seek “growth for growth’s sake.” Operations Plan at 4. As such, Grace Farms’ hours of operations should not only prohibit general public access on weekends but also be limited to the existing hours of operation of the site as a maximum – the only exceptions being for approved principal use events such as a midnight mass religious service.

Unlike Glass House, other than the number of tour participants, the Foundation offers no limitations on the number of tours it can conduct at Grace Farms. To the extent that the Commission permits tours to occur, conditions analogous to the Glass House tour restrictions should be imposed, including a requirement that the tour focus on the River Building architecture and exclude a general walking tour of the grounds.

For the foregoing reasons, this component of the Renewed Application fails to comply with the special permit criteria set forth in Regulations §§ 8.2.B.4.a, b, f & g.

Events:

The Renewed Application substantially expands the number of significant events that can take place on the property. Under the Foundation’s request, the number of permitted “large” events with more than 700 attendees is tripled from an original request of four to the current request of 12. The Foundation seeks 24 “regular” events with expected attendance of 300-700 people. These events specifically exclude Sunday & holiday Church services. Notably, “memorial or wedding services” are also excluded from this count, which is particularly curious given the Foundation’s policy not to allow such events at Grace Farms. See Grace Farms website FAQ (Exhibit I), perhaps because the Foundation has periodically made exceptions to this policy. Before “sustainability events” are factored into the calculation, the Foundation seeks

permission to have an average of three to four events of more than 300 people per week on the property (Sunday service, two “regular” events, and one “large” event) and an unlimited number of events of 299 people or less. And to be clear, the Foundation offers no restrictions on its ability to host concurrent significant events.

The requested “sustainability events,” as the Foundation notes, are “large” or “regular” events, but with a substantial monetary donation. This type of for-profit activity is certainly akin to any other event venue or conference center that hosts multi-day team building events, off-site meetings, or special events like a fundraising gala. This Commission has long prohibited the property from being used for this purpose, a conclusion well-supported by the Regulations and POCD. It should maintain that position.

The event framework proposed by the Foundation contains gaping loopholes that would allow for an intense use of the site on a regular basis. While statistical data may establish that the average programming attendance was less than 25 persons, the Foundation has offered no limitation to ensure continued programming on that scale. Smaller events are significant because without a limitation on small events or the number of space grants issued during the course of the year, events could easily result in routine use of the property by hundreds of people on a daily basis before general public visitors are factored into the site’s usage. Moreover, the Foundation excludes any event hosted or sponsored by Grace Community Church from the scope of the “event” framework, which further intensifies the likely impact on surrounding properties.

For the foregoing reasons, this component of the Renewed Application fails to comply with the special permit criteria set forth in Regulations §§ 8.2.B.4.a, b, c, f & g.

Contemporaneous Events & Future Development:

Throughout its application materials, the Foundation suggests that its events and future growth is strictly limited as a result of the parking on the property, which accommodates 226 vehicles. This suggestion, however, disregards the adverse impacts and encroachments that multiple contemporaneous events hosted at Grace Farms may have on the neighborhood – something on which the Renewed Application is conspicuously silent. Moreover, this suggestion is significantly undermined by Appendix H to the Withdrawn Application where the Foundation sought an additional 39 parking spaces, and the Foundation’s representations at both the November 29, 2016 hearing and in this Renewed Application that it intends to seek future approval for additional parking spaces. Because parking will never serve as an effective

regulator of impacts and encroachments, particularly in light of the Foundation's ability to shuttle guests from off-site parking, this Commission must expressly impose the necessary conditions to minimize any adverse impacts, rather than relying upon the number of parking spaces as an inherent cap.

For the foregoing reasons, this component of the Renewed Application fails to comply with the special permit criteria set forth in Regulations §§ 8.2.B.4.a, b, c, f & g.

Space Grants:

As the Foundation itself describes, the "space grant" program gives non-profit entities space on the Property to hold meetings and host events. But most of these non-profit entities already have existing facilities – sited in downtown, commercial districts – in which to conduct their activities, so the infrastructure provided at Grace Farms is duplicative. This programming duplication carries over to Grace Farms itself, which offers programs already in place at existing town institutions such as the YMCA, Library, Lapham Community Center and Nature Center.

Notwithstanding the representations made in the Renewed Application, the Foundation awarded over 50 space grants during 2016, and a total of 57 space grants as of early April 2017. The Foundation's space grant summary also omits at least 3 large events – the February 27, 2016 New Canaan Country School "Swing into the Centennial" event (highlighted by Commissioner Radman at November 2016 hearing), the September 12, 2016 Voices of September 11th Public Discourse Initiative, and the June 28, 2016 New Canaan Domestic Violence Partnership's Campus Safety Discussion and several private conferences during 2016, such as New Canaan Land Trust's annual and quarterly meetings.

From a land use perspective, this "space grant" use constitutes nothing more than a rent-free temporary office building or event/conference center, neither of which is permitted in a residential zone.² Because many of these grants are "small" space grants (which the Foundation identifies as involving 100 people or less), they are entirely outside the event limitations the Foundation has proposed and thus would remain completely unregulated. This type of office and conference center usage is entirely inconsistent with the lowest density residential zone in which Grace Farms is located. The concern of "institutional creep" highlighted in the POCD would be manifested if this use continues unfettered at Grace Farms.

² In fact, the demand for this type of temporary office use supports an entire industry catering to that precise need, including nearby locations in Wilton and Norwalk. See Exhibit J.

Moreover, a careful review of the Foundation's small space grant program raises even more fundamental land use concerns. Absent Grace Farms, non-profit entities, such as Arts for Healing (a current space grantee) or the recently discussed Orchard's End Health, that seek to operate in New Canaan's lowest density residential zone would need to obtain their own special permit approval from the Commission as a club or philanthropic organization. Instead, the Foundation's small space grant program allows these organizations to bypass this Commission's regulatory authority and leave control of such uses to the Foundation without any regulatory oversight by this Commission or even zoning staff. This framework stands in stark contrast to the special permit approval for Grace Community Church's activities in 2007 and Condition 13 of the 2013 Approval requiring Commission approval for outside groups (such as the YMCA or St. Luke's School as was contemplated this past November) using the gym or playing field at Grace Farms.

The Commission should also note that, as designed, the Foundation's space grant program contemplates monetary contributions by grantees in exchange for access to and use of Grace Farms' infrastructure. For example, Grace Community Church, the most prominent grantee, contributed \$120,000 to the Foundation during calendar 2015 under its revocable license notwithstanding the Foundation's substantial endowment. See December Memo, Exhibit R. By means of the space grant program, the Foundation has effectively outsourced its philanthropic initiatives and programming to third parties. Should the Foundation wish to champion music and art therapy for people with special needs under its "Arts" initiative, there is no need for the Foundation to hire its own certified therapists if Arts for Healing becomes a space grantee.

The Foundation's existing process for awarding space grants allows it to shield from this Commission and the public how frequently and intensely Grace Farms is used by third parties unaffiliated with the Foundation or Grace Community Church. To avoid an end run around this Commission's jurisdiction, any space grant should be encompassed by Condition 13's requirement of Commission review and approval prior to use. This would ensure that the space grant usage is compatible with the surrounding neighborhood and satisfies the criteria in the Regulations for such a use.

For the foregoing reasons, this component of the Renewed Application fails to comply with the special permit criteria set forth in Regulations §§ 8.2.B.4.a, b, f & g.

Visitor Volumes/Impact of Principal Uses, Ancillary Uses, Events and Space Grants:

The Foundation’s proposal for events and space grants, when combined with the on-site employees, general public usage, and Grace Community Church events, generate an intensely used site with annual attendance well over 185,000 in calendar 2016, and growing conservatively to more than 270,000 visitors in the first year following the requested approval and to more than 485,000 in the fifth year following approval. See Exhibit K. When considered separately, there can be no question that the Foundation’s proposed special permit uses of Religious Institution, Club, and Philanthropic Organization each constitute a separate and independent principal use.

Volume of Activity (Visitors)	2013 Approval	2015/2016 Usage	Post Approval-First Year Low Estimate 10%	Post Approval-First Year Modest Estimate 20%	Post Approval-Usage Year 5 with 10% increase YOY
Religious Institution - Religious Services, Church Ancillary Activities (AA etc.) and Church Staff	74,561	74,561	81,742	91,262	133,183
Club Activities - Arts for Healing, Space Grant Program, General Public Grace Farm Usage, GFF Personnel, Commercial For Profit Events	0	79,681	126,458	167,435	245,141
Philanthropic Activities - Architecture Tours, Foundation Events, Foundation Personnel, Large Events, Regular Events, Incremental Usage, Sustainability Events <i>Note: Excludes General Public</i>	0	32,318	63,201	76,830	108,583
Total Visitors	74,561	186,560	271,400	335,527	486,907

A privately-owned public space with programming attractions that draw tens of thousands of general public visitors each calendar year is incompatible with the lowest density residential zone in New Canaan. To mitigate the impacts and encroachments of this commercial facility, this Commission should seriously reconsider whether access to Grace Farms should be limited to only those persons attending specific approved and calendared programming events. Moreover, the Renewed Application’s delineation of “large” and “small” events, as well as the

unregulated events, enables this Commission to evaluate whether the uses proposed by the Foundation are appropriate for the 4 Acre Residence Zone. The answer must be no.

This conclusion is bolstered by the Commission’s own master file regarding special permits. Substantially all of the special permits issued by the Commission in lowest density 4 Acre residential zone have been for generators, landscaping and grading/drainage plans as shown below. Despite records dating back to 1960, not a single special permit has been issued for a religious institution, club, or restaurant in this residential zone, let alone multiple special permits for these uses on the same property.

Permits/Requests in the 4 Acre Zone (1960 to 2016)		
Special Permit Activity	Volume	%
Generator	67	24%
Landscaping Plan	50	18%
Grading/Drainage	20	7%
Guest House/Rental Apt	13	5%
Site Plan	13	5%
Additions	11	4%
Accessory Building	10	4%
Lighting	9	3%
Pool House/Pool	9	3%
Home Office	8	3%
Fence/Gate	8	3%
Special Permit - Portable Classroom	6	2%
Other (Barns, Decks, Sub-division of Land, Playing Fields, Easements, Tennis Court..)	55	20%
Total	279	100%
<i>Excluded: Letters, Environmental Study Impact, Renamed Street, Incomplete data, Violations...</i>		

To put this into better context, the following charts show the special permit uses sought by the New Canaan Country Club and St. Luke’s School – the two other institutional uses operating in New Canaan’s 4 Acre residential zone. All of these special permit uses are ancillary to (and dependent upon) the single principal use under which each organization is operating.

St. Luke's School		
Location: 377 North Wilton Road, 4 Acre Zone, Lowest Density		
Activity	Date	Type
Additions	3/1/02	Additions
Additions	3/1/04	Additions
Field use	6/1/04	Playing Fields
Raise field	8/19/04	Playing Fields
Field Conversion to Turf	8/17/05	Playing Fields
Raise field	8/19/05	Playing Fields
Nature Trail	4/17/07	Special Permit - Nature Trail
Temp. portable classroom	5/22/07	Special Permit - Portable Classroom
Temp. portable classroom, continued to 9/14/10	6/29/10	Special Permit - Portable Classroom
Two additions to main school building, continued to 9/14/10	7/27/10	Additions
Temp. portable classroom, continued to 9/14/10	7/27/10	Special Permit - Portable Classroom
Two additions to main school building, Sec. 3.2.C.7- Special Permit	9/14/10	Additions
Temp. portable classroom, approved for 2 years, Sec. 3.2.C.7- Special Permit	9/14/10	Special Permit - Portable Classroom
Designate headmaster house as residence and office- Amend Site Plan	11/16/10	Accessory Building
Sec.8.2.A, addition to main building-Site Plan	3/26/13	Additions
Sec.3.2.C.7 & 8.2.B, addition to main building- Special Permit	3/26/13	Additions
Temp. portable classroom allowed to remain until addition completed	5/21/13	Special Permit - Portable Classroom
Sec. 8.2.A to construct dug out-Site Plan	3/31/15	Construct Dug Out
Sec. 6.4.G, 1,000 cubic yards of soil disturbance- Special Permit	3/31/15	Grading/Drainage
Additions	1983-2004	Additions
Temp. portable classroom	1999-2000	Special Permit - Portable Classroom
Additions	2000, 2002	Additions

New Canaan Country Club		
Location: 95 Country Club Road, 4 Acre Zone, Lowest Density		
Activity	Date	Type
Lights	2/1/99	Lighting
Employee apartment	2/1/00	Accessory Building
Squash court	3/1/04	Special Permit - Squash Court
Add 14 parking spaces, exit road, Sec. 3.2.C.16, Special Permit	5/25/10	Parking
Expand squash court- Site Plan	5/24/11	Squash Court
Building Additions	2003-2008	Accessory Building

With this framework and history, it is inconceivable that the Commission would approve two primary residences on the same lot in the 4 Acre residential zone, or a community center added to the campus of St. Luke's School, or a destination restaurant built alongside the Glass House. Yet that is what the Foundation requests in its Renewed Application. As detailed in the December Memo, the March Memo and Judge Fuller's letter, the answer is obvious and a matter of plain common sense: multiple principal uses are not permitted in New Canaan's lowest density residential zone.

For the foregoing reasons, this component of the Renewed Application fails to comply with the special permit criteria set forth in Regulations §§ 8.2.B.4.a, b, f & g.

The Commons Restaurant:

As noted in the December Memo, the Commons functions as any other licensed restaurant in New Canaan. See Exhibit N to December Memo. A mere limitation in its hours and profitability does not alter the fact that such a use is not permitted in a residential zone and certainly does not constitute an accessory use as the Foundation suggests. To be an accessory use, the Commons must be limited to a defined event hosted by the Foundation or Grace Community Church, such as the monthly community dinner or pre-Sunday service breakfast. Moreover, the seasonal feature of *al fresco* dining at the Commons would ordinarily require site plan or special permit approval if sought by one of the licensed restaurants in downtown New Canaan. Regulations § 4.2.C.; 4.2.D; 4.3.C.; 4.3.D.

For the foregoing reasons, this component of the Renewed Application fails to comply with the special permit criteria set forth in Regulations §§ 8.2.B.4.a, b, f & g.

Screening/Buffer Plan:

During the withdrawal period, my clients expressed to the Foundation directly and through the Town Planner their concerns about screening the River Building and related site improvements, such as the southernmost parking lot, and use of the wetlands meadow adjacent to their backyard. See Exhibits B, C, D. As detailed in those materials, there are several key recommendations that should be considered by this Commission:

- The general public and programming attendees should remain and be directed closer to the building complex where they can be properly overseen and managed by the Foundation's security team;
- Walking trails should remain west of the stream or at least 250 feet from my clients' property line (see Exhibit L);
- Walking trails should be fixed and not subject to variability/seasonality

- Continuous permanent fencing/hardscaping should be installed along side and adjacent to the walking trails so as to create a security “white space;”
- This permanent fencing/hardscaping should be of a material and design similar to the paddock fencing and fieldstone walls currently in the Grace Farms view shed so as to provide a deterrent effect and guide the walkers away from the buffer zone.

These recommendations do not unduly restrain the Foundation’s use of its property or its “Nature” initiative. Significant other acreage at Grace Farms exists for walking trails that would not impact wetlands and abutting neighbors. The Foundation’s proposed fencing configuration is not a continuous fence line that acts as a barrier, but rather various shields that are easily circumvented by visitors. This placement does not allow for the creation of a security “white space” for Foundation security to intervene before a trespass occurs on a neighbor’s property. The Foundation’s proposed roll fencing is a bare bones, truly cheap³ solution that offers no meaningful benefit to the issues of privacy and security and quite frankly, undermines any presumption that the Foundation gave meaningful thought on how to address the neighbors’ identified concerns.

There can be no question that it is in the best interests of all parties – the Foundation, the neighbors and the Town – for the general public and programming attendees to remain in locations where they can be properly overseen by Foundation security. The Commission should implement the old adage of “good fences make good neighbors,” prohibit walking trails west of the stream, and require a high-quality fixed fence/hardscaping to create a workable and permanent delineation between my clients’ and the Foundation’s property.

For the foregoing reasons, this component of the Renewed Application fails to comply with the special permit criteria set forth in Regulations §§ 8.2.B.4.a, b, e, f & g.

Lighting:

As with the fencing, it appears the Foundation has disregarded another item of key importance to my clients. The Renewed Application offers no screening to address the light emanating from the River Building despite existing conditions addressing interior lighting. The entire 700+ foot length of the River Building – in effect a 70 story skyscraper lying on its side -- is visible from my clients’ home. Thus, they suffer disproportionately from the interior lighting, which results in a glowing band of light across their view shed that is significantly exacerbated

³ The type of fencing the Foundation proposed retails for approximately \$1 per foot. See Exhibit M.

by the pendant lighting in the Commons and Library volumes and the theater stage lighting in the Sanctuary volume.

During the January 29, 2013 hearing, the Commission heard testimony from Buro Happold about the effect and intensity of the proposed interior lighting at the River Building specifically with respect to my clients' property. This testimony misrepresented the impact the interior lighting choices would have on my clients and adjacent properties. In Buro Happold's view, the light spillover effect from the interior River Building lighting "... ranges in order of magnitude of 10% to 50% of what you would see from one candle lit a foot way landing on the ground."⁴ Unfortunately for my clients and the other abutting Smith Ridge neighbors, there is no subtlety in the level of light radiating from the River Building. It casts a glow across the horizon. Confronted with a level of light pollution at night that is equivalent to that of a large industrial complex, my clients engaged a landscaping consultant, Eric Rains, to develop a screening plan that would create an effective barrier between the River Building and their home. See Exhibit O. Eric Rains' plan calls for a planting zone that, at the Foundation's discretion, can be set either farther or nearer to the River Building depending on the size of the trees used as screening, and is based on a formula that adjusts to the changing grade.

Although this screening plan was provided to the Foundation in early February, the Foundation has not responded to the proposal, and as evidenced by its Renewed Application, ignored the critical request for a permanent solution to the light trespass. Instead, the Foundation has highlighted changes to exterior site lighting and offered quick fixes rather than permanent solutions. The required motion sensors for lights in the River Building (Condition 35) have been unsuccessful in mitigating the light impact, because the building lights have remained on throughout the night, as noted during the earlier hearings and correspondence from other adjacent neighbors. The Foundation's suggestion of curtains is not only subject to great variability, but also specifically excludes the Commons, which is the main source of light impacting my clients' property, for aesthetic reasons. Additionally, minor items in the Foundation's plan only further the impact. For example, building maintenance and cleaning after regular hours only extends the time the lights must remain on after dark; in contrast, early

⁴ Official Transcript, January 29, 2013 Public Hearing, page 102, lines 13-16. See Exhibit N.

morning maintenance (i.e. 7-9am) would take place in the daylight and inherently mitigate the light impact.

With over 18 months of operational history, it is readily apparent that variable mitigation, by way of curtains or dimmer switches as the Foundation proposes, is woefully insufficient to address the lighting impacts and represents a disingenuous solution.⁵ My clients should not be tasked with monitoring the Foundation's compliance with conditions and having to continually call for action. Ideally, the operating conditions should be self-executing. We would encourage the Commission to engage a third-party lighting consultant who can access and inspect the lighting at Grace Farms and offer a complete assessment of the site lighting (both interior and exterior), including mitigation measures as needed. If the Commission does not engage such a consultant, it must adopt Planimetrics' recommendation of full cut-off at dusk with evening activities migrating into the barns or require complete screening around the River Building as detailed in the Eric Rains landscaping proposal.

For the foregoing reasons, this component of the Renewed Application fails to comply with the special permit criteria set forth in Regulations §§ 8.2.B.4.a, b, f & g.

Sound Sculpture:

As the Commission is aware, the sound "sculpture" on the Property has long been a source of disturbance to my clients. Now, despite turning this art installation off during the withdrawal period, the Foundation seeks to re-establish this use on at least a seasonal basis. The Commission must deny this request. Not only does the 2013 Approval explicitly prohibit noise-amplifying devices at Grace Farms (Condition 39), but also the AKRF report expressly acknowledges that the music of this installation can be heard at my clients' property. AKRF Report, p. 7. We would request that the Commission ask the Foundation to play the sound "sculpture" during the public hearing and that the Foundation produce the 2015 sound analysis report confirming that the volume levels met New Canaan's noise ordinances. See December Memo, Exhibit J.

As detailed extensively in the December Memo, there is no meaningful way to enforce the existing noise ordinance, as jurisdiction for noise complaints rests with the New Canaan

⁵ The proposed seasonal lighting plan for the Commons and Sanctuary is also curious, as it does not go into effect until January 1 and then only after 8pm, despite common knowledge that night falls by 5-6pm in November and December.

Police Department. The Department has explained that it lacks the equipment and trained officers to actually undertake any such enforcement. See December Memo, Exhibit I. Given existing Condition 39, the documented noise produced by this work and the absence of any method for this Commission to enforce any sound level condition placed upon its operation, it simply cannot be permitted. The Foundation has offered no basis in the Regulations that authorizes this variety of noise-producing artwork and without such authority, it is prohibited.

For the foregoing reasons, this component of the Renewed Application fails to comply with the special permit criteria set forth in Regulations §§ 8.2.B.4.a, b, e, f & g.

Conclusion:

Like the Withdrawn Application that preceded it, the Renewed Application has fallen well short of the mark. For the reasons set forth and discussed above, including the December Memo, the March Memo, and Judge Fuller's letter, the Renewed Application proposes an unprecedented and intense use of a site in New Canaan's lowest density 4 Acre residential zone. In so doing, the Renewed Application violates not only the Regulations and POCD, but also fails to satisfy the relevant special permit criteria set forth in the Regulations. Confronted with this reality, this Commission must deny the Renewed Application and direct the Town Planner to enforce the conditions of the 2013 Approval.